

ROHIT SINGLA (#213057)  
JASON RANTANEN (#229404)  
MUNGER, TOLLES & OLSON LLP  
560 Mission Street  
27th Floor  
San Francisco, CA 94105  
Telephone: (415) 512-4000  
Facsimile: (415) 512-4077  
Email: rohit.singla@mto.com  
Email: jason.rantanen@mto.com

JAMES W. CANNON, JR. (*pro hac vice*)  
SHANNON H. HUTCHESON (*pro hac vice*)  
BAKER BOTTS, LLP  
98 San Jacinto Boulevard  
Suite 1500  
Austin, Texas 78701  
Telephone: (512) 322-2653  
Facsimile: (512) 322-8353  
Email: jim.cannon@bakerbotts.com  
Email: shannon.hutcheson@bakerbotts.com

Attorneys for Plaintiffs  
ABBOTT DIABETES CARE INC.  
and ABBOTT LABORATORIES

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ABBOTT DIABETES CARE INC. and  
ABBOTT LABORATORIES,

Plaintiffs,

vs.

ROCHE DIAGNOSTICS CORPORATION  
and BAYER HEALTHCARE LLC

Defendants.

MARIA WYCKOFF BOYCE (*pro hac vice*)  
BAKER BOTTS, LLP  
910 Louisiana  
Houston, Texas 77002  
Telephone: (713) 229-1922  
Facsimile: (713) 229-2722  
Email: maria.boyce@bakerbotts.com

DAVID G. WILLE (*pro hac vice*)  
BAKER BOTTS, LLP  
2001 Ross Avenue  
Dallas, Texas 75201  
Telephone: (214) 953-6595  
Facsimile: (214) 661-4595  
Email: david.wille@bakerbotts.com

CASE NO. C05-3117 MJJ

**JOINT STIPULATION RELATING TO  
DEFENDANTS ROCHE'S AND BAYER'S  
MOTIONS FOR PARTIAL SUMMARY  
JUDGMENT AND PLAINTIFFS' MOTIONS  
TO CONTINUE CONSIDERATION OF  
DEFENDANTS' MOTIONS FOR SUMMARY  
JUDGMENT**

**AND ~~PROPOSED~~ ORDER**

**JOINT STIPULATION RELATING TO DEFENDANTS  
ROCHE'S AND BAYER'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND  
PLAINTIFFS' MOTIONS TO CONTINUE CONSIDERATION OF DEFENDANTS'  
MOTIONS FOR SUMMARY JUDGMENT**

Plaintiffs Abbott Diabetes Care Inc. and Abbott Laboratories (collectively, "Abbott") and Defendants Roche Diagnostics Operations, Inc., Roche Diagnostics Corp. ("Roche") and Bayer Healthcare L.L.C. ("Bayer") (collectively, "Defendants") hereby file this Joint Stipulation relating to Defendants Roche's and Bayer's Motions for Partial Summary Judgment and Plaintiffs' Motions to Continue Consideration of Defendants' Motions for Summary Judgment.

On October 3, 2006, Roche and Bayer filed separate Motions for Partial Summary Judgment related to laches (collectively, "Defendants' Motions for Summary Judgment"). On October 23, 2006, Abbott filed Motions for Continuance of consideration of such motions under Rule 56(f) of the Federal Rules of Civil Procedure (collectively, "Abbott's Motions for Continuance") to permit the completion of necessary discovery related to Defendants' Motions for Summary Judgment. Abbott's Motions for Continuance and Defendants' Motions for Summary Judgment were set for hearing on Monday, December 11, 2006, at 2:30 p.m. The Court notified the parties on Thursday, December 7, 2006, that only Abbott's Motions for Continuance would be heard on December 11, 2006.

Because the parties have now reached agreement regarding the discovery related to the issues raised in Defendants' Motions for Summary Judgment, the parties are filing this joint stipulation with respect to the scheduling of discovery, briefing, and the hearing. Counsel for Bayer has represented to Abbott that all documents related to Bayer's claims of prejudice, as asserted in its motion for partial summary judgment, have been produced to Abbott. Counsel for Roche has represented to Abbott that all documents related to Roche's claims of prejudice, as asserted in its motion for partial summary judgment, will have been produced to Abbott by

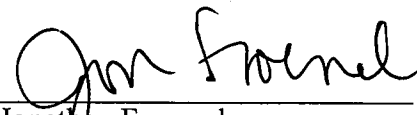
1 Wednesday, December 13, 2006. Based on these representations, Abbott has agreed to withdraw  
2 its Motions for Continuance from consideration. With respect to Defendants' Motions for  
3 Summary Judgment, the parties further stipulate as follows:

- 4 1. All discovery relating to Defendants' Motions for Summary Judgment  
5 shall be completed by February 15, 2007.
- 6 2. Abbott will file its substantive opposition to the Defendants' Motions for  
7 Summary Judgment on or before February 20, 2007.
- 8 3. Defendants will file their replies on or before March 6, 2007.
- 9 4. The hearing on Defendants' Motions for Summary Judgment will be reset,  
at the Court's convenience, for on or after March 20, 2007.
- 10 5. Abbott hereby withdraws its Rule 56(f) Motions for Continuance filed on  
11 October 23, 2006.

12 As a result of this joint stipulation, there is no longer a need for a hearing on Abbott's Motions for  
13 Continuance on Monday, December 11, 2006. Accordingly, the parties respectfully request that  
14 the Court cancel the hearing on Abbott's Motions for Continuance, and reset Defendants'  
15 Motions for Summary Judgment for hearing, at the Court's convenience, on or after March 20,  
16 2007.

1 DATED: December 8, 2006

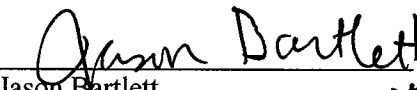
BARNES & THORNBURG LLP

2  
3   
4 Jonathan Froemel *cc/ per [unclear] [unclear]*

5 ATTORNEYS FOR DEFENDANT ROCHE  
6 DIAGNOSTICS CORPORATION

7 DATED: December 8, 2006

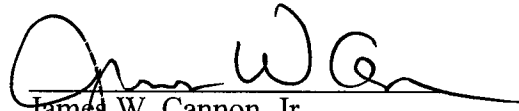
MORRISON FOERSTER

8  
9   
10 Jason Bartlett *cc/ per [unclear] [unclear]*

11 ATTORNEYS FOR DEFENDANT BAYER  
12 HEALTHCARE LLC

13 DATED: December 8, 2006

BAKER BOTTS L.L.P.

14   
15 James W. Cannon, Jr.

16 ATTORNEYS FOR PLAINTIFFS ABBOTT  
17 DIABETES CARE INC. AND ABBOTT  
18 LABORATORIES

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served on the following counsel  
of record via electronic mail:

***Counsel for Roche Diagnostics Corporation***

Brent A. Harris  
Roche Diagnostics Corporation, Inc.  
9115 Hague Road  
Indianapolis, IN 46250  
*brent.harris@roche.com*

Donald E. Knebel  
Larry A. Mackey  
Lynn C. Tyler  
Paul B. Hunt  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, IN 46204  
*donald.knebel@btlaw.com*

Daniel P. Albers  
Jonathon Froemel  
Barnes & Thornburg LLP  
One North Wacker Drive, Suite 4400  
Chicago, IL 60606  
*daniel.albers@btlaw.com*

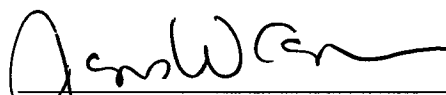
Ashok Ramani  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
*aramani@kvn.com*

***Counsel for Bayer Healthcare L.L.C.***

Jason Bartlett  
Wesley E. Overson  
Morrison Foerster  
425 Market St.  
San Francisco, CA 94105  
*woverson@mofo.com*

I certify under the penalty of perjury that the foregoing is true and correct.

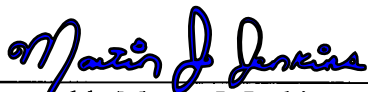
Executed on December 8, 2006, in Austin, Texas.

  
James W. Cannon, Jr.

~~PROPOSED~~ ORDER

Having considered the parties stipulation set forth above, the December 11, 2006 hearing on Abbott's Motions for Continuance is hereby VACATED, and Defendants' motions for partial summary judgment are RESET for hearing on March 20, 2007 at 9:30 a.m.

Dated: 12/11/2007

By:   
Honorable Martin J. Jenkins  
UNITED STATES DISTRICT JUDGE